



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



CONFLICT OF INTEREST OPINION EC-COI-87-41

FACTS:

You are the Chief Probation Officer of a District Court, Your wife is also employed by the same District Court, You and your wife were recently married, and you now supervise your wife. You are interested in continuing to supervise your wife and in complying with the conflict law. You contacted the State Ethics Commission concerning the application of G.L. c. 268A, s.6 to your situation. You were informed by informal Commission staff letter that s.6 contains an exemption procedure which, if strictly followed, would permit you to supervise your wife. Specifically, you were informed that if you disclosed to your appointing official and the Commission the relevant facts surrounding your wife's financial interest in your supervision and if you received from your appointing official a written determination that her financial interest is not so substantial as to affect the integrity of services which the state expects from you, you would be able to participate in her supervision. You then indicated that the First justice was your appointing official and have sought a written determination from him pursuant to s.6.

QUESTION:

Is the First justice of a District Court the appointing official of a Chief Probation Officer for the purposes of G.L. c. 268A, s.6?

ANSWER:

Yes.[1]

DISCUSSION:

As a probation officer in a District Court, you are a state employee for the purposes of G.L. c. 268A. Section 6 of G.L. c. 268A prohibits a state employee from participating[2] in any particular matter[3] in which a member of his immediate family[4] has a financial interest. By supervising your wife, you are participating in matters in which she has a financial interest. See, {Commission Advisory No. 11}. As applied to you, whenever you are required to supervise your wife, you must therefore comply with the abstention requirements of s.6 or seek an exemption under that section.

The Section 6 exemption procedure can only be authorized by your appointing official. The conflict of interest law states that a state employee "shall advise the official

responsible for appointment to his position" in seeking an exemption under s.6. "The phrase seems to refer generally to the official with the statutory authority to make the appointment." Buss, *The Conflict of Interest Statute: An Analysis*, 45 B.U.Law.Rev. 299,362 (1965). The phrase has also been interpreted to mean the state official responsible for the employment of the state employee. Attorney General Conflict Opinion No. 282, November 4,1964. G.L. c. 276, s.83 states that". . . the justices of each other district court . . . may appoint ... probation officers ... provided further that any such appointment shall be reviewed by the chief administrative justice of the trial court for compliance with the Standards promulgated under s.8 of c. 211B." G.L.c. 211B, s.8 states, in pertinent part that:

any appointment that is governed by standards promulgated by provisions of this section shall forthwith be certified in writing for compliance with such standards to the office of the chief administrative justice. The chief administrative justice shall have the power to reject any such appointment within 14 days after receipt of the certification of compliance by the appointing authority but such power shall be limited to non-compliance with the standards for appointment.

It has been noted that the language of G.L. c. 276, s.83, combined with that of G.L. c. 211B, s.8 reflects part of the confusion within the court system over lines of authority and administrative responsibility for the probation system.[5] Spanenberg Group, *Assessment of the Massachusetts Probation System*, at 54 (October, 1987).

The official with the statutory authority to make the appointment is clear, however. The First Justice of a District Court selects his or her candidate for the position of chief probation officer. This candidate's name along with the information required under c. 211B, s.8[6] is forwarded to the Chief Administrative Justice for review for compliance with personnel policies and procedures. After the office of the Chief Administrative Justice receives the above information, there is a 14 day period to approve or disapprove. This power is referred to as the power to reject in G.L. c. 211B, s.8.

The Commission concludes, as a result, that a First Justice is the appointing official of a Chief Probation Officer in that the First justice is the state official affirmatively responsible for the employment of the Chief Probation Officer. The Chief Administrative Justice's rescission power, defined narrowly by statute, does not appear sufficient to make him the official with the statutory authority to make the appointment. The choice of the First Justice as the appointing official is also consistent with the purposes of the s.6 exemption process. Section 6 anticipates that an appointing official will make a subjective decision regarding the appropriateness of permitting a subordinate to participate in a matter affecting a family member. "The official making the determination may take into account the employee's personal character. What might be too substantial an interest for one state employee may be for another [insubstantial] .. ." Buss, *supra*, at 362. We regard the First Justice who oversees the conduct of a probation officer in his or her court on a regular basis, to be in a knowledgeable position to make a subjective decision regarding the integrity of the probation officer.

DATE AUTHORIZED: November 16, 1987

[1] The Commission's conclusion is limited to the application of G.L. c. 268A, s.6 to the Chief Probation Officer, and does not purport to address the determination of an appointing official either for other judicial employees or for the purposes of other statutes.

[2] "Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.

[3] "Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property.

[4] "Immediate family," the employee and his spouse, and their parents, children, brothers and sisters has a financial interest.

[5] Chief probation officers are also responsible to the Commissioner of Probation.

[6] This information includes the candidate's personnel file, an explanation of how the position became vacant and a copy of any resignation which creates a vacancy; a certification that adequate funding is available in the current fiscal year budget to fill the position; the number of applicants for the position; a list of all applicants interviewed and a copy of the application and resume of the final candidate, a written record indicating the reason why these applicants who met the minimum requirements for the position were not interviewed, a statement of the final applicant's relationship or lack of relationship to any judicial employee: a copy of all applications in which the pre-employment consideration section was completed, a listing of all locations in which the job was posted, a copy of the job posting (if the position was advertised) a copy of the advertisement, (if the position was not advertised) a certification that adequate funding was not available, and the applicant interview and hiring record.